IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.273 OF 2000

Mrs. Leela Sudhir Alekar .. Appellant

vs.

M/s. M.K.Associates .. Respondent.

V.S.Gokhale, Advocate for the Appellant.

Mr.Rishikesh Pethe, Advocate for the Respondent.

CORAM : A.S.OKA, J.

DATED : 1st February, 2005.

ORAL JUDGMENT :

1. Heard Counsel appearing for the parties. The appeal is preferred by the Original Defendant. The order impugned is dated 3.2.2000, by which the application made by the respondent/plaintiff for attachment before judgment was allowed. The appellant was directed to furnish a security of Rs.17,00,000/- within a period of 15 days from the date of the order and it was further directed that if the appellant fails to furnish the security, the property described in the schedule of the application will stand attached.

2. The Counsel appearing for the appellant pointed out that at the time of admission of this appeal in Civil Application No. 3037 of 2000 this Court granted interim relief in terms of prayer (a) of the Civil Application and thus the operation of the order impugned was stayed. The said order of stay is still operating till today. He also pointed out that though Civil Application No.1086 of 2001 was filed by the respondent for vacating the said order of stay, this Court has not vacated the order and has directed that the said application should be heard alongwith the nain appeal. Shri Gokhale submitted that considering the averments in the application and the reply filed by the respondent no case was made out to the grant of attachment before judgment. He, therefore, submitted that the impugned order deserves to be quashed.

3. Shri Pethe, learned Counsel appearing for the respondent invited my attention to the various averments made in the application for attachment before judgment. He pointed out the communication

dated 7.11.1997 sent by the Advocate for appellant to the Advocate for respondent. In the said communication, the Advocate for the Appellant stated that his client was free to sell the property to any third party. He, therefore, submitted that the learned trial Judge was justified in passing the order of attachment.

4. I have considered the rival submissions. Perusal of the impugned order shows that the learned trial Judge has not considered the reply of the appellant to the application for attachment before judgment. In the said reply the appellant has stated thus:

> This defendant submits that the application of the palintiff is of a defamatory character and the defendant reserves her right to take appropriate steps in civil and criminal court against the plaintiff. The mother of this defendant was a member of Natu family. Natu was Sardar of Peshwas and they own large and extensive property, both movable

> and immovable, in Pune. In fact, the suit property is situated in Natu Baug, which belongs to the family of Natu. The said property is in the heart of the city and it is a prime locality. Besides the suit property, this defendant owns house at Deccan Gymkhana, agricultural property as Janai Mala and many acres of land in Pune District as also in Satara District. It is preprosterous to suggest that this defendant will not be able to pay the amount of the plaintiff, if the suit is not decreed. The plaintiff has inflated his claim, which has no basis. Besides the said property, this defendant owns extensive moveable property in the form of bank deposits. The plaintiff is fully aware of the wealth and status of the defendant."

There is nothing on record to show that the said contention raised by the appellant in the reply was controverted by respondents/plaintiff. Considering the said averment in the reply it is

very difficult to come to the conclusion that any attempt is made by the appellant to obstruct or delay the execution of the decree and that the appellant was trying to dispose of whole or part of her property.

5. Considering this aspect of the matter, in my view, the impugned order is not sustainable. As stated earlier the impugned order has not operated till today as there is a stay granted by this Court. Hence I pass the following order:

i) The impugned judgment and order dated 3.2.2000 is quashed and set aside and the application at exhibit 5 made by the respondent stands rejected.

ii) The appeal is allowed in above terms with no order as to costs.

iii) If the suit is still pending in the trial Court, the same shall be decided expeditiously without being influenced by the observations made either in the impugned order or in this judgment.

. Parties to act on the authenticated copy of this order.

(A.S.Oka, J.)